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ONE HUNDRED NINTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON THE JUDICIARY

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<http://www.house.gov/judiciary>

July 26, 2005

The Honorable Glenn A. Fine  
Inspector General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW, Suite 4706  
Washington, DC 20530

Dear Inspector General Fine:

We write to request that you immediately commence an investigation of the Department of Justice's handling of the investigation of the leak of the identity of a covert CIA operative's identity by high-ranking Administration officials. Press reports and other information obtained by House Judiciary Committee Democrats appear to demonstrate that on at least two separate occasions, DOJ personnel acted to permit delays in the investigation, which may have resulted in the loss or destruction of critical evidence.

First, over this past weekend we learned that then-White House Counsel Alberto Gonzales received what appears to be a "heads-up" about the commencement of the investigation from Justice Department officials in the evening of September 29.<sup>1</sup> Through White House staff, he asked DOJ personnel if it was permissible to wait an additional 12 hours to notify the White House staff of the investigation and presumably direct the staff to preserve all relevant documents and records relating to the inquiry. According to Mr. Gonzales, "Department of Justice lawyers" gave their assent to this delay:

I specifically had our lawyers go back to the Department of Justice lawyers and ask them, "Do you want us to notify the staff now, immediately or would it be okay to notify the staff early in the morning?" And we were advised, go ahead and notify the staff early in the morning, that would be okay.<sup>2</sup>

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<sup>1</sup>Frank Rich, "Eight Days in July," *The New York Times*, June 24, 2005, at 13. See also, Dafna Linzer, "Bush Aide Learned Early of Leaks Probe," June 25, 2005, at A02.

<sup>2</sup>*Face the Nation* (CBS television broadcast, June 24, 2005).

Notwithstanding this request, Mr. Gonzales informed the White House Chief of Staff Andrew Card about the investigation. It is not yet known who the White House Chief of Staff advised about the investigation prior to the Counsel's official notification twelve hours later.

For example, this twelve hour head start is a clear and troubling departure from Department practice. When White House contacts with Enron became essential to that investigation, then-Deputy Attorney General Christopher Wray immediately directed the White House to preserve all e-mails, memos, notes, letters and other documents from Enron employees or "any individual acting officially or unofficially, directly or indirectly on behalf" of the company.<sup>3</sup> Less than an hour after receiving the directive, Mr. Gonzales issued an "administrative alert" directing officials to comply.<sup>4</sup>

Second, we previously received information about a similar delay with respect to the original criminal referral of this matter by the Central Intelligence Agency. In a letter to Ranking member Conyers, dated January 30, 2004 (enclosed), the CIA describes repeated delays and inaction by the Department. The Agency notes that Executive Order 12333 requires the Central Intelligence Agency to report to the Attorney General "possible violations of criminal law." Pursuant to this requirement, according to the letter, the CIA did the following:

- On July 24, 2003, a CIA attorney left a phone message for the Chief of the Counterespionage Section of the Department of Justice noting his concern with recent stories apparently exposing the identity of Valerie Plame, an employee of the agency working under cover. There was apparently no response from the Department.
- On July 30, 2003, the CIA reported to the Criminal Division of the DOJ a possible violation of criminal law concerning the unauthorized disclosure of classified information. There was apparently no response from the Department.
- The CIA again transmitted their concerns by facsimile on September 5, 2003.
- On September 16, in accordance with the Agency's standard practice in these matters, the CIA advised the Department that it had completed its own investigation of the matter, provided a memorandum setting forth the results of

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<sup>3</sup>Ron Hutcheson, "U.S. Boosts Its Inquiry into Enron; White House Records Are Sought," *Milwaukee Journal Sentinel*, February 2, 2002, at A01.

<sup>4</sup>*Id.*

The Honorable Glenn A. Fine  
July 26, 2005  
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the investigation and requested that the FBI undertake a criminal investigation of the matter.

- Finally, on September 29, 2003—sixty-seven days after the initial concerns were expressed by CIA employees—the DOJ responded and advised the CIA that the Counterespionage Division had requested that the FBI initiate an investigation of this matter.

Thus, it appears, that not only did DOJ personnel countenance a 12-hour delay in notifying White House staff to preserve all records (while the White House Chief of Staff was given a heads up of the existence of the investigation), but that the DOJ also appears to have ignored repeated entreaties from the CIA to initiate a law enforcement investigation into this matter several months before hand. We would therefore urge you to examine the extent that this course of conduct and other delays by the Department are consistent with standards of prosecutorial conduct and integrity.

Please respond to us at your earliest convenience though the Judiciary Committee Minority Office, 2142 Rayburn House Office Building, Washington, DC 20515.

The Honorable Glenn A. Fine  
July 26, 2005  
Page Four

Sincerely,

John Longers  
Rino Van Hollen  
Robert Wachs  
N

William Delahous

John L  
Jared Nadler  
Marty Mink  
Dick Boucher  
Bobby Looff



Washington, D.C. 20505

30 January 2004

The Honorable John Conyers, Jr.  
Ranking Democratic Member  
Committee on the Judiciary  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Conyers:

Thank you for your letter of 29 September 2003 to the Director of Central Intelligence (DCI) regarding any contacts the Central Intelligence Agency (CIA) has had with the Department of Justice (DoJ) to request an investigation into the disclosure earlier that year of the identity of an employee operating under cover. The DCI has asked me to respond to your letter on his behalf.


Executive Order 12333 requires CIA to report to the Attorney General "possible violations of criminal law." In accordance with Executive Order 12333 on 24 July 2003, a CIA attorney left a phone message for the Chief of the Counterespionage Section of DoJ noting concern with recent articles on this subject and stating that the CIA would forward a written crimes report pending the outcome of a review of the articles by subject matter experts. By letter dated 30 July 2003, the CIA reported to the Criminal Division of DoJ a possible violation of criminal law concerning the unauthorized disclosure of classified information. The letter also informed DoJ that the CIA's Office of Security had opened an investigation into this matter. This letter was sent again to DoJ by facsimile on 5 September 2003.

By letter dated 16 September 2003, and in accordance with standard practice in such matters, the CIA informed DoJ that the Agency's investigation into this matter was complete, provided DoJ a memorandum setting forth the results of that investigation, and requested that the Federal Bureau of Investigation (FBI) undertake a criminal investigation of this matter. In a 29 September 2003 letter, DoJ advised that the Counterespionage Section of DoJ had requested that the FBI initiate an investigation of this matter.

The Honorable John Conyers, Jr.

I hope the information set forth in this letter provides the assistance you were seeking.

Sincerely,

  
for Stanley M. Moskowitz  
Director of Congressional Affairs

F. JAMES SENSENBRENNER, JR., Wisconsin  
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ONE HUNDRED EIGHTH CONGRESS

# Congress of the United States

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COMMITTEE ON THE JUDICIARY

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September 29, 2003

JOHN CONYERS, JR., Michigan  
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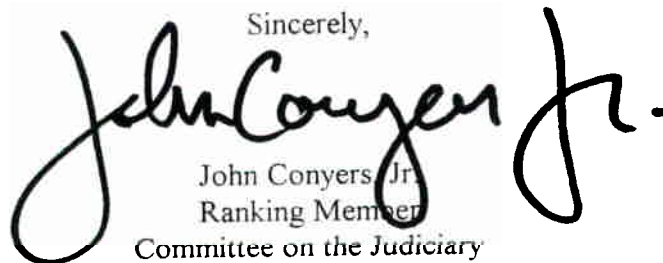
The Honorable George J. Tenet  
Director of Central Intelligence  
Washington, DC 20505

Dear Mr. Director:

I am enclosing a letter I sent to the Attorney General today, requesting that he appoint an outside special counsel to investigate the leaking of the undercover status of the wife of Ambassador Joseph Wilson. I believe this matter presents grave and serious allegations. To assist me in my oversight of the Justice Department, I write to ask that you provide me the dates and descriptions of any contacts you are aware of that your Agency has had, formally or informally, with the Justice Department to request an investigation of this matter and any responses you have received, formally or informally, thereto. Should you have any questions or concerns about this request, please contact me through Perry Apelbaum or Ted Kalo with my Judiciary Committee staff (phone: 202-225-6504, fax: 202-225-4423), 2142 Rayburn House Office Building, Washington, DC, 20515.

Thank you for your assistance in this matter.

Sincerely,



John Conyers, Jr.  
Ranking Member  
Committee on the Judiciary

Enclosure

F. JAMES CONSENSENBRENNER, JR., Wisconsin  
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LINDA T. SANCHEZ, California

September 29, 2003

The Honorable John D. Ashcroft  
Attorney General of the United States  
U. S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Dear Mr. Attorney General:

I am writing to formally request that the U. S. Department of Justice appoint an outside special counsel to take over the investigation of the leaking of an undercover CIA operative's name to columnist Robert Novak and to request that we meet or that you set up a staff briefing at the earliest opportunity to discuss these matters. According to the *Washington Post*, a senior White House official has indicated that two top White House aides called six reporters and revealed that Ambassador Joseph Wilson's wife was an undercover CIA operative. The motive for this criminal action has been described as "revenge" for Wilson's revelations that the State of the Union address contained fraudulent information about Saddam Hussein and Weapons of Mass Destruction.

Under the Department's regulations, the Attorney General is required to appoint a special counsel when (1) a "criminal investigation of a person or matter is warranted," (2) the investigation "by a United States Attorney's Office or litigating Division of the Department of Justice would present a conflict of interest for the Department," and (3) "it would be in the public interest to appoint an outside Special Counsel to assume responsibility for the matter." 28 C.F.R. § 600.1 (2002).

There can be no doubt that this matter presents a clear conflict of interest for you and your Department to investigate. When top Administration officials are involved in such a grave and serious matter that would almost certainly damage the credibility of this Administration, it goes without saying that your office is ill equipped to carry out such an investigation. It has also been reported that one of the criminal leakers of this information was allegedly Karl Rove, the President's top political advisor, and the architect of his reelection campaign. It should be noted that Rove was reportedly fired from the campaign of President George H. W. Bush over a leak to



The Honorable John D. Ashcroft  
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Page 2

Robert Novak. "Why Are These Men Laughing?," Ron Suskind, *Esquire Magazine*, January 2003. It has also been reported that Mr. Rove was the driving force behind your nomination as Attorney General. "How the Religious Right Pushed for Ashcroft's Nomination," David Johnston and Neil A. Lewis, *New York Times*, January 7, 2001.

There appears to be little doubt that persons in the White House communications or political team or other high ranking political officials were the sources of this information. This in turn raises further questions that warrant an objective investigation by a special counsel. Such White House officials would not be privy to the names of undercover CIA operatives because such information is usually disclosed only to those with appropriate clearances and only on a "need to know" basis. Who disclosed this information to the White House political team or communications team and why did they do it? Such a disclosure would represent a violation of that individual's Classified Information Nondisclosure Agreement and, a violation of a number of federal statutes.

There also can be no doubt that this case presents allegations of criminal wrongdoing of the most serious kind, essentially amounting to treason. Under 50 USC § 421(a), the disclosure of the name of a covert agent is punishable by up to ten years in prison. As the President's father said in 1999, "I have nothing but contempt and anger for those who betray the trust by exposing the names of our sources. They are, in my view, the most insidious of traitors." Dedication Speech George Bush Center for Intelligence, April 16th, 1999. There can be no doubt that this matter placed the lives of Ambassador Wilson, his wife, and her contacts at risk.

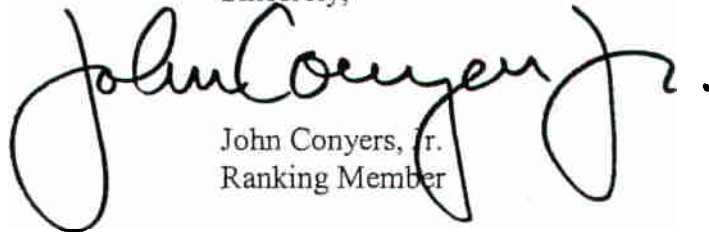
I am concerned that your Department has been dragging its feet in this matter. Reports indicate that CIA officials approached your office requesting an investigation of this matter within days of Mr. Novak's July 14 column. Given that your Department has taken no discernible action in this ensuing two months, there is the appearance that this investigation is being stonewalled. This impression is bolstered by the fact that you have been asked, on a number of occasions, to appoint special counsels to investigate allegations of criminal wrongdoing by high ranking Administration officials, and have in every instance declined to do so. From Enron to Westar, you have refused to take the most basic steps to ensure that there is an impartial investigation of these matters. It should also be noted that, in all of these matters in which you assured the public that your Department could appropriately investigate officials of its own Administration, you have taken no actions against any such officials.

I look forward to promptly hearing whether you will appoint a special counsel and, if not, the reason for your decision. Should you have any questions or concerns about this request,

The Honorable John D. Ashcroft  
September 29, 2003  
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please feel free to contact me through Perry Apelbaum or Ted Kalo with my Judiciary Committee staff (tel. 202-225-6504, fax 202-225-4423), 2142 Rayburn Building, Washington, D.C., 20515.

Sincerely,

A handwritten signature in black ink, reading "John Conyers, Jr." with a stylized flourish at the end.

John Conyers, Jr.  
Ranking Member

cc: The Honorable F. James Sensenbrenner, Jr.  
Chairman  
U. S. House Committee on the Judiciary

The Honorable Will Moschella  
Assistant Attorney General  
Office of Legislative Affairs